

BEYOND BRICKS AND STONES

The Voice of Construction Workers



Preface

A national seminar on 'Construction Labour' was organised in New Delhi from November 1-3, 1985. The seminar was organised by Tamil Nadu Construction Workers Union, Madras with the assistance of Legal Aid and Advice, New Delhi; Committee for Implementation of Legal Aid Schemes, New Delhi and Society for Participatory Research in Asia (PRIA), New Delhi. The main objective of the seminar was to examine the problems faced by workers in the construction industry and the possibility of a comprehensive legislation that can protect the interests of the construction workers. Over the years, it has been felt that the existing labour legislations have very little potential of getting implemented in the construction industry due to the peculiar features of the industry itself. There is no change in the conditions of the workers even after the amendment of the existing labour laws.

Over 250 participants comprising a large number of construction workers from different parts of the country as well as other trade union leaders, builders' representatives, lawyers, government officials, social scientists etc. took part in the seminar. For the first time, members of the labour force themselves were actively involved in the process of deliberating on the content and form of the law to be formulated that could ensure a better future for them.

The discussions and deliberations of the seminar were centered around the issues relating to the unregulated nature of the construction industry that lead to the marginalisation of the construction workers, and the need for an alternative legislation.

It was collectively felt that the existing legislations, in essence, have not consciously taken into cognisance the problems and peculiarities of the construction industry. All the participants including representatives of the industry, were in favour of a comprehensive legislation that would regulate the industry, employment pattern etc., as well as provide the statutory framework for economic and welfare provisions for the workers. In other words, emphasis should be placed not only on enacting a legislation but in regulating its effective implementation. Hence, a self-regulating legislation is called for—a legislation that guarantees the rights of workers as well as ensures their participation in the process of regulation.

It was recommended by the seminar participants that a draft bill for such a comprehensive self-regulating legislation be prepared and presented before the Parliament. Alongwith it, a national campaign should be launched to conscientize and organise the construction workers, and to highlight their problems. This campaign can then provide the necessary support for the legislation.

This booklet briefly presents the deliberations and outcomes of this national seminar. It describes the nature of the construction industry, the plight of construction workers and the inappropriateness of existing legislations for this industry. We hope that this will be useful in highlighting the need for an alternative legislation and building larger support for it.

Binoy Acharya of PRIA has prepared the text of this booklet. Work Bench has assisted in its publication.

New Delhi
February, 1986



Construction Industry In India

The construction industry started even before the industrial revolution. Industrial revolution and the subsequent 'development' processes have accelerated and widened the arena and scope of construction. It will not be wrong to say that construction is the base over which other industries and socio-economic activities grow.

Construction activities include:

- Building structures— Dams, Bridges, Roads, Factories, Houses, Railway tracks, etc.
- Maintenance of constructed structures
- Allied activities (brick-making, stone-quarrying, plumbing etc.)

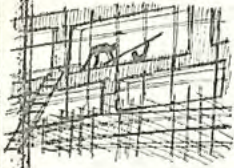


Since independence, a large percentage of the total investment in the country has been going to construction. It is now considered as the second largest economic activity, next only to agriculture. Since government is giving added emphasis on the creation of 'development' infrastructures, it is certain that construction industry will only increase its importance in the coming years. It is calculated that whatever money has been spent on construction during last 35 years, an equal amount will be spent during the next five years. Construction is consistently providing a substantial (about 5%) contribution to the national income in the country.

- Investment in construction during the last 30 years was more than the total investment made during 150 years of British rule.
- At present, the investment on construction is about half of the total investment made towards all development works.
- During 1951-85, investment on construction was about Rs 2 lakh crores.
- Construction adds 78 paise to Gross Domestic Product (GDP) per rupee of investment, which is next only to banking and agriculture.

In spite of the vast amount of money spent on construction, the industry is far from being regulated or organised and no benefit accrues to the workforce. The principal employers in this industry are government departments, private undertakings, registered and unregistered builders or companies and individuals. The largest principal employers in the construction industry are the central and state government departments and public sector undertakings.

Unregulated Industry



Construction activities are mostly carried out in an adhoc manner. A number of parties are involved in construction: the client (principal employer), contractor, consultants and the workers. The first three have a predominant voice or control over the work, whereas the workers only carry out the work as per specifications given to them. During the actual work, however, these three parties have no direct role in organising the labour process. The work is mostly controlled by a sub-contracting system. This system does not have any legal standing, but does most of the work including controlling the workers.

Invisible Employer

The invisibility of the employer is the principal reason of the perpetuation of the ad hoc relationship. Consequently there is no formal working relationship between the employer and the worker. In practice, despite statutory provisions, the employer bears no responsibility towards the workers.



Seasonal Work

Construction operations are seasonal in nature. With the advent of the rainy season, construction comes to a stand still. As a consequence, the industry is not able to provide full employment to the workers.

Mobile Industry

The most significant aspect of the industry is its mobile nature. It is the only industry where the industry is mobile and the product is static. As construction in one place finishes, the workers have to leave for another place in search of work. The worker takes the whole responsibility on his own to get a day's wage. The industry does not have any in-built provision to identify a worker and regulate his job.



Ad hoc functioning of the Industry

- invisible principal employer
- seasonal nature of the work
- mobile nature of the industry
- unregistered employers, and above all
- unregulated industry.



The Work Force and its Plight

Construction industry draws most of its workforce from the rural areas, particularly from the most vulnerable sections of the society. An estimation from the total money invested on construction, reveals that more than one crore workers are employed in this industry of which 10% are women.

Census enumeration is not the sacred cow

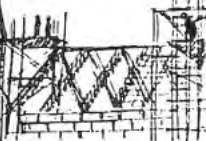
- As per 1981 census enumeration about 37 lakhs of workers are employed in construction.
- But mandays calculated based on investment reveals that economically active population engaged in construction should be more than one hundred lakhs.

(It is estimated that one lakh rupees worth of construction generates 3100 mandays of unskilled labour and 1300 mandays of technical/managerial personnel).



Rural Origins

Construction being a traditional activity, a segment of the labour force in the industry, especially within the skilled workers, originates from this. Impoverishment in the rural areas coupled with urbanization, results in the largescale induction of the rural poor into the industry, constituting the bulk of the workforce. The rural origins of the workforce renders it particularly susceptible to gross exploitation for reasons of ignorance, illiteracy and poverty.



Vulnerable position of the workers and the mobile nature of the industry do not allow the workers to get organised to fight for their rights.

Employment

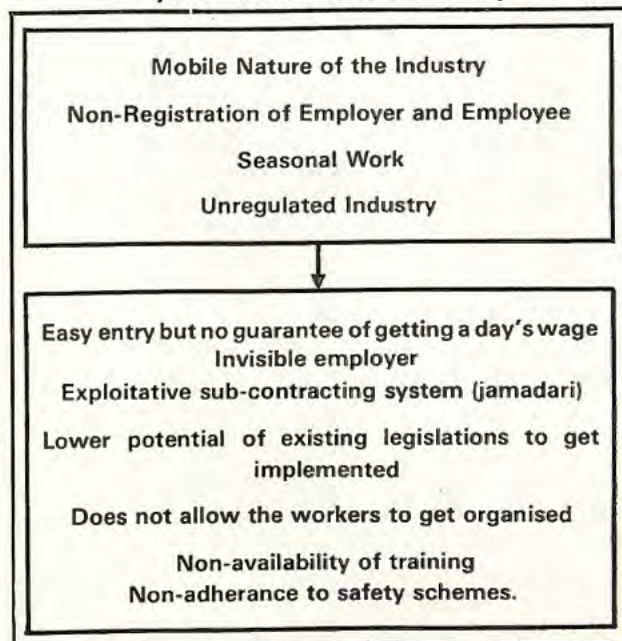
Most of the construction works employ daily wage casual labourers. Even the registered companies employ unskilled workers on a temporary basis. The relationship of these workers with the industry is not governed by any legal sanction as they are not directly employed by the principal employer. Invisibility of the principal employer gives advantage to a third party to take complete control over the employment pattern. It is known as sub-contracting system and locally known as 'Jamadari' or 'Peshgi' system.



Exploitative Sub-Contracting System

A worker's entry into construction work is simple but it offers nothing worthwhile. Anyone can enter the ranks of this massive workforce in the absence of licencing and regulatory provisions. Workers at all skill levels are hired on a time basis varying from daily hiring at the market place to short stretches (till a piece of work is completed). None of these offer any security of employment and since no records are maintained at the worksite, the worker is never granted any legal standing. The situation is even worse, when workers assemble at one place every morning and the 'Jamadar' picks them up for a daily wage. A day's wage of the worker is completely dependent upon the availability of work and the mercy of the 'Jamadar'. There is every chance that many of them have to return back or seek some other work when the 'Jamadar' denies them work. This is a very common phenomenon in cities like Delhi, Bombay etc, where large groups of workers come from remote rural areas in search of a construction job. Construction workers constitute one of the largest number of bonded labourers in the country.

Dynamics of the Industry



Absence of permanent labour and mobile nature of the industry create problems for the worker to search for employment on his own. As a consequence, the workers have no other way, but to fall prey into the hands of the sub-contractors.

In big constructions, the contractors frequently bring the labourers from their own villages, lingual groups or caste groups. As these labourers are 'pushed out' from agriculture, they often do not have the capacity to bear the transport cost. In such cases, the sub-contractor advances the money to them. But when the worker comes to the new place and starts working, the sub-contractor deducts that money along with interest from the wage. However, he takes no responsibility for providing housing or regular employment. Because of the economic and social vulnerability, the workers cannot even raise their voice against the sub-contractors.

Wages

Construction workers are among the least paid workers in India. The wages are paid on the basis of a day's work or on piece-rate basis. Discrimination of wage in terms of sex is widely prevalent in this industry. Sometimes, the workers, after coming to the work place, cannot start the work because of non-availability of raw materials or bad weather, like rain, he is then denied his day's wage. In spite of the fixation of minimum wage, hardly any worker receives the right wage. The workers are never paid the wage for one extra day for every six day's of continuous work, though the Minimum Wages Act, 1948 clearly specifies it. Moreover, as the minimum wage varies from zone to zone, district to district and state to state and as the worker moves from one place to another, his wage structure never remains fixed. All this creates problems while calculating compensation and other economic benefits.



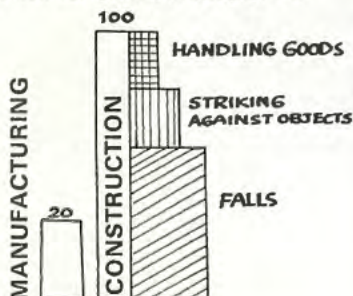
Work Hazards

A high degree of risk and danger is involved in this work. The work proceeds in most dangerous situations under sun, cold, heat, rain, dust, etc. The magnitude of accidents and occupational diseases associated with this work is appallingly high and complex. It is because most of the operations are labour intensive with the presence of inadequate safety measures, low quality of materials used,

non-identification and non-recognition of risky actions, non-analysis of accidents and lack of training of workers on safety.

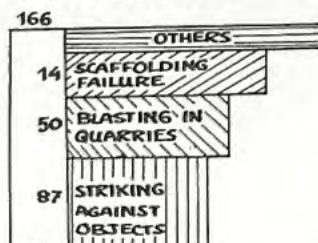
A British Statistics

ACCIDENTS IN MANUFACTURING & CONSTRUCTION INDUSTRY - %



An Indian Case

DEATHS DUE TO ACCIDENTS DURING THE CONSTRUCTION OF NAGARJUNASAGAR DAM



Causes of Accidents

Failure or collapse of scaffolding, centering & shuttering.

Improper guard against the work environment

Night work with poor lighting

Fire and electrocution

Excessive noise

Handling of heavy finished and semifinished materials, like metals

Blasting

Underground work

Working Hazards

Cause

Cement Dust

Plaster

Wood burning

Sand

Asbestos

Work at high place

Sound

Heat

Vibration

Repetitive work

Effect

— Irritation to lungs, cancer and skin disease

— Irritation to lungs, eyes and skin and lung cancer

— Asthma and nasal cancer

— Silicosis

— Asbestosis (Lung disease)

— Blood Pressure

— Loss of hearing, stress, blood pressure

— Heat cramps and sun burns

— Numbness of hands and fingers

— Sprain, rheumatism

Discrimination Against Women

The women workers in the construction industry do the most strenuous and unskilled jobs like brick-making, stone quarrying, assembling of construction materials, lifting of stones, bricks and cement etc. Despite their principal role in the construction work, they are not considered as the main labour force. The employers generally consider them as mere helpers and give them less wages than the male labourers. The discrimination never ends at the wage level. The amount of physical hardship and its consequent effects upon the health of the women are never realised. The strenuous work can cause major health hazards to the pregnant women and lactating mothers. Carrying heavy loads upon the ladder and over uneven surfaces can cause spontaneous miscarriages in case of pregnant women. Knowing all this, till today, there is no provision of maternity benefit, creche facilities, etc. for women construction workers. Further, women workers continue to work as helpers throughout their lives since they are denied training on skilled works. Sexual harassment of women workers in this industry is also quite widespread.



Absence of Training

With the absence of new methods and new designs in construction, most of the work is going into the hands of specialists. The average construction workers who are skilled in traditional construction work are not getting any chance to enter into the modern construction work in the absence of training facility. The unskilled workers like the helpers generally learn from the masons, but no one recognises them as they have not worked before. A helper is always a helper and a mason is always a mason. Promotion and training are unheard of by construction workers. With new technical methods being introduced in construction, the absence of training will restrict the entry of the unskilled and semi-skilled labourers into the industry in future.



Lack of Security

In spite of the wide prevalence of improper employment pattern, low wages, accidents and diseases, the construction worker faces many other problems. The workers live in slums in small huts near the site of the construction in most unhygienic conditions. The employer does not take any responsibility of providing proper accommodation to the workers, though he is legally supposed to do so. There is no schooling facility, and little children extend a helping hand to their parent's work without any claim on wages.

In this industry, the workers do not get any proper compensation in case of accidents or medical facility in case of ill-health. Bonus, gratuity, provident fund, and other social security schemes are never imagined of by them.



Minimum Rights of a Worker in Construction



Minimum wage
Housing
Medical/ESI

largely absent

Bonus
Gratuity
Provident fund
Promotion
Other Welfare Scheme
Maternity Benefits

glaringly absent

There is no leave, no social security, no safety provisions. In order words, the workers in this industry do not enjoy any rights as their counterparts are having in other organised sectors. The existing conditions of the construction workers exposes the inadequacy of the present labour legislations.



Legislations Inadequate

Most of the existing labour legislations have come out of sustained struggles of the working class. Among the set of legislations, only a few protect the rights of all sections of the working class. It has been accepted in the Report of the National Commission of Labour that almost all the existing legislations are not applicable in case of construction workers. The existing legislations have been framed keeping in mind the situation and needs of the organised sector. The nature of the construction industry is so different from other sectors of work that these legislations have very little potential to serve their purpose. Moreover, as the workers of the industry are less vocal, illiterate and unorganised, their interests and rights have been systematically undermined. A candid evaluation of the industry and legislations shows that a self-regulating legislation alone can regulate the industry and alleviate the conditions of the workers and meet their aspirations.



Existing Legislations

- Minimum Wages Act, 1948
- Employees State Insurance Act, 1948
- Employees Provident Fund, Misc. Provision Act, 1952
- Contract Labour (Regulation & Abolition), Act 1970
- Factories Act, 1948
- Tamil Nadu Construction Labour Act, 1984 (Pending for President's assent)

The above are not applicable to the workers in construction industry BECAUSE

- Employment and work activity is unregulated
- Principal employer is hidden
- There is no provision to identify the employer and worker
- It is a mobile industry—frequent change of place of work and employer
- There is no method to guarantee a regular employment to the worker.
- All the above legislations are formulated taking into account the nature and needs of the organised sector

HENCE A fresh legislation is needed that will take care of the peculiarities of the industry and regulate the industry and ensure the basic rights of workers.

The workers are at a disadvantage with the extension of the existing legislations to the construction industry. For instance, the Employees State Insurance Act, 1948 has been extended for construction workers. But as the employer-employee relation is transient any deduction from wages will not benefit the worker. This not only takes away the responsibility of the employer but in essence exploits the worker. Mere extension of a piece of legislation without knowing its nature of functioning is meaningless. Extension of Employee's Provident Fund and Misc. Provision Act, 1952 is also facing the same consequence. This act was extended to construction workers in October, 1980. The provident fund is meant to create a fund for the benefit of the worker at the old age or for the family in the event of unfortunate death of a worker. The contribution for it is equally matched by worker and employer. In case of construction, there is not yet any clear method to maintain a provident fund account as there is no fixed employer and no regulated employment of the worker.



The Need

The need for the protection of the rights of the construction workers has been many times put before the government. Each time it is pressed, government comes out with an amendment to the existing legislations. No effort is made to examine the applicability of a particular legislation. It should be remembered that, Justice Gajendragadkar, Retired Chief Justice of India, had submitted a report to the government examining all the different labour legislations. The government, instead of examining it and looking for different possibilities, shelved the report since then.

In Tamilnadu, after 5 years of struggle by Tamilnadu Construction Workers' Union, the government brought out a bill which is nothing but a replica of Contract Labour Act. The government did not want to listen to the views of the union. Though the Bill Review Committee headed by Justice V.R. Krishna Iyer recommended major changes, the government refused to accept most of the recommendations.

In Kerala, after sustained pressure from the construction workers union, the State Government appointed a commission to inquire into the introduction of a welfare fund. After one year of probing, the commission gave its report in 1984. But the government is not paying any attention for its implementation.

As a matter of fact, most of our legislations are facesaving devices, because, while passing the bill, no effort is made to examine its functional aspects. In case of construction workers and industry, the existing labour legislations have no regulative strength to get operationalized or implemented.

A law paper has no value as long as it is not enforced. Every law should have the inbuilt capacity to be self-regulating so that it has the capacity to prescribe as well as control.

To safeguard the interests and rights of the construction workers, a fresh comprehensive legislation needs to be framed, so that it can regulate the industry, employment, wage, employer-employee relationship and ensure economic benefits and welfare to the workers. In other words, the legislation should not only take into account the responsibility, rights and other statutory provisions but also



be self-regulating by itself. In the context of frequent change of work place, sometimes from one district to another or one state to another, there is a need to establish a national institutional structure which can keep the records of the employers and employees and regulate the industry all over the country. It can be a Construction Labour Board. This board can then maintain and administer Provident Fund, Gratuity, ESI-health, Housing, Bonus, etc. for all the registered workers, recovering a certain percentage from all the registered employees. In other words, the Board will be the single national institution to which workers can make their claims wherever they might be.

During the National Seminar, it has been clearly argued and generally agreed that extension of existing labour legislations to construction industry will not serve any purpose because of the peculiarities of the industry. It was strongly felt that a National Construction Board with State Boards and district officers can alone regulate the industry, and enforce the laws and provide social and economic justice to the construction workers.



Follow-up

A National Campaign Committee was formed under the Chairmanship of Justice V.R. Krishna lyer to pursue the follow up actions proposed at the seminar. Some of the action programmes are:

- **Drafting the Bill**— To complete the drafting of a model bill incorporating the consensus arrived at the seminar.
- **Lobbying**— To launch concerted campaigns co-ordinated at the national level, like meeting members of Parliament to enlist their support in getting the model legislation enacted.
- **Campaign at state level**— To form state-wise campaign committees to mobilize workers in different states to press the government to enact such legislation.
- **Regional Seminar and Workshop**— To organise seminar and Workshops as a part of the organizational programme to enlist the support of other sections of the society.
- **Signature Campaign**— To launch a massive nation-wide signature campaign for construction workers petitioning the Parliament to accept and enact the model bill.

Proposed Construction Labour Board

- It will be a statutory body consisting of a tripartite committee representing Government, Labour and Employers.
- It will take care of the mobile nature of the industry and invisible presence of the principle employer.
- It will regulate the employment and migration pattern by compulsory registration of employers and employees.
- It will restrict employment to only registered workers by registered employers.
- It will determine wages and disburse wages.
- It will provide equitable sharing of available employment among the registered workers.
- It will collect from the builder wage bill including social security and ESI contribution in proportion to working days and a construction levy towards welfare fund to provide for housing, creches, minimum wage guarantee, training, etc.
- It will give consent to builder after collecting the above mentioned amount and 'consent' to be got compulsorily in order to get sanction of plan.
- It will create standards, and ensure adherence to them, on matters of workplace, health and safety.

The National Campaign Committee has submitted a memorandum to the Hon'ble Minister for Labour of Union Government informing him of the proposals arrived at the seminar and urged the Central Government to take initiative in providing for social justice to the construction workers. The proposed draft bill is now ready and being circulated.

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